

Marshfield Development Review Board

Minutes

Thursday, March 9, 2017, 7:00 p.m.,
Old Schoolhouse Common

Present: DRB Members, James Arisman, Les Snow, Gary Leach, and Jenny Warshow. **Recused and Not Present:** Michael Schumacher. **Present for Proceedings:** Robert Light, Zoning Administrator; Paul Gillies, Attorney for Town and ZA Light; Liza Earle-Centers, Appellant; Peter Lloyd; James Jamele, Attorney for Mr. Lloyd; Darrell Burkhalter; Jessica Lloyd; Robert Dutil; Joshua Gouge; Robin Schunk.

At 7:15 p.m., James Arisman, presiding for the Development Review Board (DRB), called the meeting to order. The DRB met on this date to conduct a hearing on the appeal of Liza and Lincoln Earle-Centers of the decision and acts of the zoning administrator (ZA) regarding his approval of the “home occupation” use of the accessory building, located at 64 Church Street, Marshfield by Peter Lloyd Plumbing. The property in question is owned by Darrell and Adair Burkhalter. All witnesses were sworn in prior to testifying.

Liza Earle-Centers testified that her concern regarding the decision of the ZA and the basis for her appeal began when she and her husband, Lincoln, received a copy of a letter from James Jamele, attorney for Peter Lloyd, to ZA Light and proposing possible use of the office at the accessory building at 64 Church Street as an office for Peter Lloyd Plumbing under the home occupation provisions of Section 304 of the Marshfield Zoning Regulations.

Ms. Earle-Centers stated that her concerns were that she and her husband had already been through three or four months of uncertainty and had received a favorable DRB decision in an earlier, related matter. They were now confronted with the possibility of the Lloyd Plumbing continuing operations at the accessory building despite the earlier disapproval by the DRB. Ms. Earle-Centers stated that she attempted to talk with the ZA about the matter and later received from him a copy of a letter dated January 26, 2017 from the ZA to James Jamele, attorney for Peter Lloyd. The ZA’s letter approved a home occupation use of the accessory building

by Peter Lloyd and listed a series of conditions/limitations imposed by the ZA on how Peter Lloyd would be required to follow in using his business office at the accessory building.

The Earle-Centers had continuing concerns regarding traffic, the addition of seasonal workers in the fall and winter months, and the general neighborhood impact from continued commercial activity. Their position was that a conditional use application was the proper means to consider the matter, rather than simply a decision by the zoning administrator acting alone without public hearing and input.

The ZA testified that on January 19, 2017 by letter he had had given Peter Lloyd Plumbing a notice of zoning violation (NOV) but had allowed Lloyd 90 days to vacate the premises because of the difficulty of moving in winter. (Note: the copy of the NOV reviewed by the DRB is dated January 20, 2017.) The ZA testified that after he sent the notice of violation to Peter Lloyd, he received a letter from James Jamele, attorney for Peter Lloyd, dated January 19, 2017. The letter proposed possible use of the accessory building by Peter Lloyd as a home occupation on the theory that Barbara Burkhalter, as an employee of Peter Lloyd would be working on the property in Lloyd's office with Peter Lloyd.

ZA Light testified that he responded to the above letter with his own letter on January 26, 2017. He said that he thought the proposed use was a home occupation under Section 304 of the Zoning Regulations and approved it, but listed bullet points conditions that limited Lloyd's use of the property.

The ZA stated that in this specific case, there was no application filed for home occupation use. In fact, he testified, he had never had anyone apply to him for a home occupation use. When asked for a citation of express authority, State or local, empowering the ZA to approve home occupation uses, both the ZA and Mr. Gillies were unable to do so. The DRB chair responded that the ZA had in writing provided an approval, set conditions, and provided the usual notice of appeal at the end of his January 26, 2017 letter.

The Earle-Centers had filed their timely appeal by letter dated February 4, 2017.

The ZA was asked to identify express authority, State or local, for the ZA

to negotiate terms and conditions for issuing permits in individual cases. The ZA did not cite such authority. The ZA also was asked to cite authority for him to alter the provisions set out under Section 304 of the Zoning Regulations. Again, the ZA did not cite such authority. When the ZA was asked, "Who was the applicant?", the ZA replied that there was "no applicant".

Mr. Jamele stated that his client had asked the ZA by letter about the possibility of treating the Lloyd office use at the accessory building as a "home occupation" and in turn he had gotten a letter back from the ZA putting conditions on such a use and listing these. Mr. Jamele characterized this as simply "an extension of the original application." The ZA then stated that he "guessed that Peter Lloyd would be the applicant." Mr. Jamele stated that on behalf of Peter Lloyd Plumbing he had asked the ZA whether the office use would qualify as a home occupation and had suggested responses to concerns identified in the earlier DRB decision, noting that Barbara Burkhalter worked in the office as a bookkeeper.

However, after this exchange, Mr. Gillies stated that he had conferred with Mr. Jamele, who had shared with him a Vermont Supreme Court Decision, In re Chandler Shed & Dwelling Applications, No. 2007-003 (Vt. Oct. 19, 2007 (unpub. mem.)). Mr. Gillies briefly summarized the Supreme Court decision as holding that a "home occupation" must be one owned by a person who actually lives in the building in question. Mr. Gillies reasoned that in the instant case, while Barbara Burkhalter is an employee of the business, mere employment is not a sufficient basis for a "home occupation"-- the business has to be owned by the resident. Mr. Gillies concluded by saying that the Chandler case appeared to "settle" the case then before the DRB, specifically referring to the language of the last page of the decision.

Mr. Jamele responded that nothing in the Marshfield Zoning Regulations requires that a home occupation be owned by the resident of the property. The Chandler case was a decision on the zoning ordinance from Newfane, Vermont. Marshfield has not previously decided such a similar case. Mr. Jamele urged the DRB not to follow the holding of the Chandler case and to rely instead on the fact that one of the workers for Lloyd Plumbing does in fact live at the address of the accessory building. Mr. Jamele stated that in advising his client, he had relied on the language of Section 304 of the Zoning Regulations which states that "[n]o regulation herein is intended to

infringe” on the use of a minor portion of a dwelling as a “home occupation”.

ZA Light testified that he decided that the proposed use qualified as a home occupation because the office work there would be carried on by a member of the family residing in the dwelling. “She [Barbara Burkhalter] would be running the office, and it seemed to me like a home occupation.” The ZA testified that in making his decision he had never actually talked to Barbara Burkhalter, and, instead, had only spoken with James Jamele and Peter Lloyd before making his decision.

Ms. Earle-Centers testified that the ZA did not seem in conversations to understand the concerns of she and her husband. Ms. Earle-Centers testified that her family was uncomfortable with having to rely on nothing more than assurances and promises made over the phone from a lawyer to the zoning administrator. She expressed concern that such a decision making approach might not ensure improvement of the situation they had been living with since August or protect their rights as property owners and neighbors. She and her husband had talked about making suggestions to the ZA about how he could address their concerns. Later, they decided that because of the existing encroachment and impact of the commercial operations of Lloyd plumbing they needed to appeal and not simply accept the decisions of the ZA and the manner in which it was made.

Ms. Earle-Centers testified that the in a small neighborhood like theirs, the presence of people who are not neighbors and who are coming and going and running a business there-- “in your front yard” —feels like an “outside entity”, not something that your neighbors are pursuing as a “home occupation”. She added, “Barbara [Burkhalter] hasn’t been part of any of these discussion or letters, and it just feels like this is Peter Lloyd’s thriving, growing business, not Barbara’s business.” She added that she felt as though she and her husband were left “out of the loop” by the ZA’s communications with Mr. Jamele and Mr. Lloyd, and that there were discussions going on behind them.

The ZA testified that it was his opinion that no permit is required in Marshfield for home occupations. Mr. Gillies advised that in other towns most people pursuing home occupations do not bother to obtain permits. He added, however, that as a general matter “every use requires a permit” but also opined that zoning would be rejected if seen to be too draconian.

However, Mr. Gillies suggested that in his view a permit for a "home occupation" is required.

M. Jamele reiterated that he and Mr. Lloyd had merely asked the ZA if a home occupation could be approved for Mr. Lloyd's office. He stated that they had been granted a "permit" by the ZA and had acted in good faith under the assumption that they could rely on the ZA's approval of continued use of the office. The ZA earlier had given Peter Lloyd until April 19 to remove the other aspects of the Lloyd business from the accessory building. Mr. Jamele summarized for Mr. Lloyd that their position is that Mr. Lloyd has been issued a permit by the ZA to continue to work in the accessory building, to have an office there, and that Barbara Burkhalter does work there, and that Mr. Lloyd has tried to respond to the concerns of the Earle-Centers.

The hearing was closed at approximately 7:50 p.m. At approximately 7:55 p.m. Member Gary Leach moved that the DRB enter deliberative session to consider the matter. Member Les Snow seconded. All in favor. At approximately 8:25 p.m. the DRB completed its deliberations. Member Jenny Warshow moved adjournment. Gary Leach seconded. All in favor.

Minutes Prepared By: James S. Arisman, DRB Member.

The foregoing is a true copy of the Minutes of the March 9, 2017 Meeting of the Marshfield, VT DRB.

By _____/S/_____, James S. Arisman